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June 28, 2002

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte Presentation**
ET Docket 01-278; RM-9375; RM-10051
Radar Detector Interference

Dear Ms. Dortch:

Hughes Network Systems, Inc. ("HNS") submits this letter in response to the RADAR *ex parte* submission of June 11, 2002. RADAR protests that the Commission's Notice of Proposed Rulemaking ("NPRM") in this proceeding is inadequate to support adoption of a final rule regulating radar detectors, and that a further NRPM is required. Under the Administrative Procedure Act (the "APA") and related case law, the NPRM and the record in this proceeding provide more than a sufficient basis for adopting now a final rule subjecting radar detectors to Part 15 rules in order to protect licensed satellite earth antennas, including VSATs, from interference.

The gravamen of RADAR's APA complaint is that the NPRM did not include the text of a proposed rule. This argument is specious. The APA is expressly clear that adequate notice of a rule may include "either the terms or substance of the proposed rule *or a sufficient description of the subjects and issues involved.*"¹ In other words, "[a]n agency is not even required to include in its notice of proposed rulemaking any version of a proposed rule."²

¹ 5 U.S.C. § 553(b)(3) (emphasis added).

² 1 Richard J. Pierce, Jr., Administrative Law Treatise § 7.3, at 427 (2002).

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Adequate notice in an NPRM must afford interested parties a reasonable opportunity to participate meaningfully in the rulemaking process by fairly apprising interested parties of the issues involved, so that they may present responsive data or arguments relating thereto.³ All of these requirements have been met in this case.

The NPRM specifically addresses the interference caused by radar detectors into VSATs, and indicates that “changes to the requirements for radio receivers operating above 960 MHz may be warranted. The Commission explicitly asked for comment so it could determine whether to change the current regulatory requirements for radio receivers operating above 960 MHz, such as radar detectors. The NPRM goes on to describe in detail the problems caused by radar detectors. Finally, the NPRM sets forth the issues upon which parties should comment: (i) if there is a need for radar detectors to comply with emission limits, what the appropriate limits should be, (ii) to which bands the limits should apply, and (iii) the appropriate timeframe for compliance. The commenters in this proceeding have submitted substantial support for adopting a strict limit on emissions from radar detectors in the Ku-band satellite frequencies that goes into effect immediately, including evidence substantiating the existence of an interference problem, and the technical bases for the proposed emission limits.

For these reasons, under the APA, the Commission has plenary authority to issue a final rule based on the NPRM and the existing record.

An original and five copies are enclosed. If you should have any questions regarding this submission please feel free to contact us at (202) 637-2200.

Respectfully submitted,

/s/ Elizabeth Park

John P. Janka
Elizabeth R. Park

cc: Peter Tenhula
Bryan Tramont
Paul Margie
Sam Feder
Julius Knapp
Geraldine Matise

³ *MCI Telecommunications Corp. v. FCC*, 57 F.3d 1136, 1140-1141 (D.C. Cir. 1995).